

From: Ernie DeVries
To: Microsoft ATR
Date: 1/25/02 12:19pm
Subject: Microsoft Settlement

I am not a lawyer. I cannot speak to the legal points of the proposed settlement of DOJ's anti-trust action against Microsoft. Although I am a computer professional, in many ways I am just a consumer who is directly affected by the actions of Microsoft because I use personal computers. I can speak to the impact of a settlement on consumers.

The largest personal impact of Microsoft's conduct has been the lack of choice by consumers. Microsoft has a long history of actions such as pre-announcements, feature add-ons and exclusive agreements which have been done not to improve the use of MS products, but simply as preemptive strikes to keep competitors from continued development on products. For me, this kind of behavior is the core issue in MS using it's existing monopoly to enter new markets.

Although it was not specifically addressed in the trial, events at Gateway computer illustrate this problem. There was a time when Gateway included "Office" software with each new computer at no additional charge. Gateway customers were given the choice between Microsoft Office and WordPerfect Office, with no push or coercion toward either product. This practice did not last long, but was replaced by Gateway offering no choice - only MS Office. Anyone who believes that Gateway took this action on its own, without behind-the-scenes "encouragement" from MS, is a fool.

The connection to this case is that even if MS never actually leaned on Gateway to exclude competing products, MS was able to create an environment wherein vendors had to live with the constant threat that they would be cut off by MS or have prices increased by MS so that the manufacturer could not compete. This environment lead directly to reduced choice for consumers with resulting higher prices and lower productivity because the "better mousetrap" never had a chance in the marketplace.

Certainly there were errors in judgement by the original trial judge regarding the sharing of his thoughts about the trial, but as I watched the trial unfold I was repeatedly struck with the thought that Judge Jackson seemed to be the only one involved in the case who was making any sense at all. If the actual judgement of Judge Jackson cannot be implemented, then certainly his intent needs to be preserved.

To accomplish this, I see the following as being critical pieces of the conclusion of this case:

- 1) Consumer choice will only be restored when MS is forced to open its files to share information on API calls and file formats so that all competitors have the same advantage as the internal developers at

Microsoft. This is not sharing source code, but interfaces.

2) Exclusive contracts must be prohibited between MS and its OEM customers as well as with VARs (Value Added Resellers).

3) MS must be prohibited from giving away products. I know this is very difficult to define, but we must never again have a situation like Internet Explorer which was created and given away for the exclusive purpose of undercutting a competitor that did not have the same financial resources as MS. Consumers are not benefited by "free" products when the result is the lack of real alternatives in the marketplace.

4) Financial penalties. The financial penalties from Microsoft's past behavior must be so severe that MS will never again consider repeating its behavior.

The bottom line is that we need a sentence that restores choice and innovation to the marketplace. MS must become one player among equals instead of being the only player that counts.

Thank you for your time.

Sincerely,
Ernie DeVries
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